

JUAN JOSE MORALES,	)	No. C 11-06656 EJD (PR)
Petitioner,	)	ORDER TO SHOW CAUSE
vs.	)	
	)	
MIKE MCDONALD, Warden,	)	
Respondent.	)	

Order to Show Cause  
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Petitioner appealed his conviction. The state appellate court “resentenced and ‘consolidate[d]’ petition,” and the state high court denied review in 2011. (*Id.* at 3.)

Petitioner filed the instant federal habeas petition on December 27, 2011.

## DISCUSSION

### A. Standard of Review

This court may entertain a petition for a writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a).

It shall “award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” *Id.* § 2243.

### B. Legal Claims

Petitioner claims that he was appointed a new attorney on resentencing as his trial attorney had been disbarred. Petitioner claims that the new attorney rendered ineffective assistance on resentencing matters. Liberally construed, his claim is cognizable under § 2254 and merits an answer from Respondent.

## CONCLUSION

For the foregoing reasons and for good cause shown,

1. The Clerk shall serve by certified mail a copy of this order and the petition and all attachments thereto on Respondent and Respondent’s attorney, the Attorney General of the State of California. The Clerk also shall serve a copy of this order on Petitioner.

2. Respondent shall file with the court and serve on petitioner, within **sixty (60) days** of the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of


1 habeas corpus should not be issued. Respondent shall file with the answer and serve  
2 on Petitioner a copy of all portions of the state trial record that have been transcribed  
3 previously and that are relevant to a determination of the issues presented by the  
4 petition.

5 If Petitioner wishes to respond to the answer, he shall do so by filing a  
6 traverse with the Court and serving it on Respondent within **thirty (30) days** of his  
7 receipt of the answer.

8 3. Respondent may file a motion to dismiss on procedural grounds in lieu  
9 of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules  
10 Governing Section 2254 Cases. If Respondent files such a motion, Petitioner shall  
11 file with the Court and serve on Respondent an opposition or statement of non-  
12 opposition within **thirty (30) days** of receipt of the motion, and Respondent shall  
13 file with the court and serve on Petitioner a reply within **fifteen (15) days** of receipt  
14 of any opposition.

15 4. Petitioner is reminded that all communications with the court must be  
16 served on Respondent by mailing a true copy of the document to Respondent's  
17 counsel. Petitioner must also keep the Court and all parties informed of any change  
18 of address.

19  
20 DATED: 4/19/2012

  
EDWARD J. DAVILA  
United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

JUAN JOSE MORALES,

Petitioner,

v.

MIKE MCDONALD, Warden,

Respondent.

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Case Number: CV11-06656 EJD

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 4/20/2012, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Juan Jose Morales F44043  
High Desert State Prison  
P.O. Box 300  
Susanville, CA 96127

Dated: 4/20/2012

Richard W. Wieking, Clerk  
/s/ By: Elizabeth Garcia, Deputy Clerk